

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

February 2007

RELIGION AMONG FRIENDS

Religion in schools has been debated countless times in the courts, school hallways, classroom, board meetings, parking lots, the state legislature and everywhere else two or more people gather.

But those debates most often center on students and what can be taught in the classrooms.

Far less debated, and understood, is teacher's religious rights and protection against discrimination.

While teachers may not proselytize to students, they may do so to each other—a situation that can become hostile at times. Teachers, as adults, however, are expected to tell their proselytizing colleague that they are not interested in the colleague's religious persuasion and to please stop talking about it.

In some schools this may be easier said than done. For educators who are not in the majority, expressing displeasure with religious proselytizing may lead to bigger problems for the educator.

At the extreme end, the educator who complains may find him or herself without a job.

But educators cannot be fired for preferring a different religion from the majority, or for complaining about proselytizing colleagues.

Proving that an educator has been fired or demoted based on religious reasons is not always easy. The educator must show that (1) he has a religious belief; (2) he is qualified for his position; (3) he was terminated or otherwise harmed in his employment, despite his qualifications; (4) his po-

sition still exists.

Proving these elements, however, is not the end of the road. Once the edu-

cator shows all four items exist, the employer has a chance to prove that it had legitimate, non-discriminatory reasons for terminating, demoting or otherwise acting adversely against the employee.

Still, the case is not over. If the employer has reasons other than religious issues for its action against the employee, the employee then has the chance to show that the stated reasons were not the actual reasons for the employment action.

Thus, if the employer says the educator was demoted because he failed to follow the terms of an employee improvement plan, the employee can offer evidence of written evaluations showing that he was performing satisfactorily under the

Finally, the ball is in the court's hands and the judge or jury will decide if the employer fired the educator for its stated reasons, or if the educator is right and the reasons given were "merely pretextual"—created after the fact to disguise the discriminatory purpose.

The most compelling evidence for both sides in a religious discrimination suit is documentation. An employer needs to document whenever it has concerns about an employee's ability to perform the job. Glowing evaluations filled out in hurry to "get it over with" become great evidence for the educator.

Similarly, the educator needs to document those times when discriminatory comments are made or actions are taken against him without legitimate reason. An evaluation that harps on small problems that multiple educators experience but are not "written up" for, and which closely follows a religious confrontation, may serve as evidence that the educator is being discriminated against.

Inside this issue:

| Professional Practices | 2 |
|---------------------------|---|
| Eye On Legisla- tion | 2 |
| Recent Education Cases | 3 |
| Your Questions | 3 |



UPPAC CASES

- The State Board of Education suspended David C. Houle's license for two years. The suspension results from Houle's pattern of emotional abuse and religious discrimination against students, violation of student confidentiality, and allowing and encouraging students to harass other students.
- The Board accepted an agreement for an 18-month suspension of Nathaniel M. Morrell's license. The agreement results from Morrell's use of school equipment to view pornographic materials.
- The State Board reinstated the license of Colby M. Nielson. The reinstatement follows a suspension for personal use of school funds.

Eye On Legislation

This year's legislative session reminds us of the Bill Murray movie "Groundhog Day"—we seem to be having the exact same debates we have had for the last several years at the Legislature.

The session began with a reprise of the Medical Recommendations for Children bill. This bill has been debated three years running, and vetoed twice. The sponsor, Rep. Mike Morley, R-Spanish Fork, insists he has amended all of the problems out of the bill, but that doesn't make it any more necessary than it has been the past three years.

What a number of legislators fail to recognize each session is the simple truth that, if a Legislator takes a State Board rule and makes it law, the Legislature becomes a super school board.

The bill will most likely make it into law again this session. It will probably NOT be vetoed this time around.

Next on the list of repeat legislation is the school clubs bill. Once again, the sponsor began with a workable State Board rule and,

after making the rule less workable and more susceptible to litigation, hopes to act as a super school board and make the rule into state law.

Once again, we are also caught in the voucher battle. Part I, the House Education Committee, took place on Jan. 30. and, as expected, the bill passed out on a purely partisan vote.

Part II, House Floor Debate, took place on Feb. 1 and passed by one vote. The bill should sail through the Senate and is expected to be signed into law by the governor. Several organizations have expressed interest in legal challenges to the bill once it becomes law.

Sadly, the lack of respect some legislators show for the many men

and women who make public education work in the state also persists.

Listening to committee and floor debates on education issues takes very thick skin. Apparently, public educators are not parents, or citizens, they are "the Establishment" and "bureaucrats" and cogs in the "government schools."

These cogs, whom we would term underappreciated public servants, apparently, in the minds of some legislators, know little about providing public education. Despite the testimony of educators, legislators insist that public schools should be run like businesses—with the rather overbearing exception that education will face legislation anytime any parent has a complaint that is not resolved to the parent's satisfaction, regardless of whether the parent's expectations are reasonable or feasible.

UPPAC Case of the Month

Over and over, UPPAC sees educators who become or try to become intimately involved with students start the relationship off with personal notes to the student.

A note to a student that says "good job!" can be a nice motivational tool. But a note that says "I love you" or "you're my best friend" or "I look forward to seeing you every morning" or "just wanted to say how pretty/handsome you looked to today" is unprofessional conduct.

Educators also need to be aware that notes like these may be given without evil intent, but can scare students. If a favorite teacher begins sending such notes, the student may at first be happy or excited to receive it. But if the notes continue, the student may be-

come uncomfortable, and not know how to handle this odd situation its one thing to tell a classmate to buzz off, it's quite another to tell an adult.

> Gifts are also an issue, both to and from students. There are few, if any, times when an educator should or would give a current student a gift. This might be appropriate if the student has been seriously ill

or injured, or decides to marry or gives birth during the school year.

There is no time when an educator should give a gift of lingerie to a student or receive such a gift from a student (don't laugh, both have happened).

Furthermore, educators need to address inappropriate gift-giving by students with the student, and possibly his or her parents.

For example, in one UPPAC case

from several years ago, a student gave a teacher a pornographic video. The teacher took the video home, watched it, and then returned it to the student.

In this situation, however, the educator should have told the student the gift was inappropriate, taken it to the principal and informed the student's parents of the gift.

No matter how worldly a student may be, or appear, the educator is always responsible for maintaining professional boundaries, including reminders to students about where those boundaries are set. Whether a student welcomes a romantic letter or best friendship with a teacher is not the issue—the teacher should NOT be a student's best friend or ever view a student as a potential date.

Utah State Office of Education Page 2

Recent Education Cases

Mayer v. Monroe County Community School Corp., (7th Cir. 2007): A teacher sued after she was non-renewed following anti-war statements made during a current events class session.

The teacher responded to a student's question about whether she took part in political demonstrations. The teacher answered that she would honk her horn to show support for demonstrations against American involvement in Iraq.

Parents complained about the comments to the principal. The principal told all of the teachers that they could not take sides in any political controversy in class.

The teacher argued that her free speech rights in a matter of public concern outweighed the district's interests.

The Court held that the teacher had no right to "present personal views to captive audiences against the instructions of elected officials (the school board)."

First, the court noted that a teacher must follow the curriculum prescribed by principals, districts and school boards, including not only what to teach, but also the "prescribed perspective on that subject matter."

The court noted that this is the

case because the school "does not 'regulate' a teacher's speech as much as it hires that speech. Expression is a teacher's stock in

trade, the commodity she sells to her employer in exchange for a salary."

More importantly, the court noted "children who at-

tend school because they must ought not be subject to teachers' idiosyncratic perspectives."

The court went on to recognize that majority rule about perspectives may lead to indoctrination, but determined that "if indoctrination is likely, the power should be reposed in someone the people can vote out of office, rather than tenured teachers."

In short, the teacher was told she could teach about the public controversy surrounding the war in Iraq, and include arguments from all perspectives, but she had to keep her personal opinions to herself. She did not, and nonrenewal was appropriate.

D.F. V. Board of Education of Syosset Central School Dist., (U.S. Supreme Court 2007). The Supreme Court denied certiorari, letting stand a 2nd Circuit decision upholding the dismissal of a student based on written

> threats. The sixth-grade student was suspended for 30 days after he wrote and read a story to his classmates in which named students were murdered and sexually assaulted.

Shelby v. Conroe Independent School Dist., (U.S. Supreme Court 2007): The Supreme Court also denied certiorari to parents who sued the district after it compelled a student to submit to a medical evaluation without parental consent.

The denial lets stand the Fifth Circuit court opinion that a district can require a medical evaluation of a student where the evaluation is necessary to complete a reevaluation of the student's IEP.

The Fifth Circuit further held that the student's privacy rights were not violated by the requirement since she could refuse to receive special education services rather than submit to the medical evaluation.

Your Questions

Q: Does a dual enrolled student have a right to participate in the high school graduation ceremonies?

A: No student has a **right** to participate in graduation. Whether fully enrolled or dual, a school can deny a student the opportunity to participate in the ceremony.

Much like school dances and parties, graduation ceremonies are usually reserved for students who are fully enrolled in the What do you do when. . . ?

school and have earned a diploma at the school. The requirement that a student be full time to participate in these types of activities has been upheld by multiple courts.

Courts have recognized that parties and ceremonies contribute to the overall school environment, but do not affect a student's future. A child can get into a good college without ever attending a school dance. The child may have a harder time getting into college if he has not participated in any extracurricular activities.

Thus, a school can limit social activities, including graduation ceremonies, to students who are full-time enrolled.

However, a school can also **grant** a student the right to participate, and should consider this option when a dual enrolled student has

(Continued on page 4)

Utah State Office of Education

Utah State Office of Education

250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7830 Fax: 801-538-7768 Email: jean.hill@schools.utah.gov





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of Education provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3)

contributed to the reputation and success of the high school. A school that grants access, however, should have specific standards for determining when to grant the access to ensure that all non-enrolled students are treated the same.

- Q: If we have pictures of students using marijuana off campus, can we take any disciplinary action against them?
- A: Yes, with appropriate due process. State law prohibits students from using or possessing drugs or drug paraphernalia, on campus or not. If the conduct involves "a person associated with the school," the school can suspend or expel the student.

Any suspension or expulsion, however, should follow appropri-

ate procedures, giving the students a chance to present their side of the story.

Its important to note also that the law permitting this kind of action does not grant schools the authority to take action, it requires schools to adopt **policies** for such disciplinary action.

Schools need to be sure that their school discipline policies contain all of the state law required elements.

- Q: My student was hurt when he accidentally bumped into another student. Shouldn't the school pay the medical bill for his stitches since the accident occurred on school grounds?
- A: Unless the school was somehow negligent, no. If the students were fighting, were known to fight

with each other, and the school took no action to stop the fight, the school might be liable for the bill.

Or, if the student slipped on a puddle of water that the school was aware of and had not done anything about, then the school could be liable.

But, if the student's accidentally bumped into each

other as part of the regular hustle and bustle of the school hallway, the school is not liable.

Schools are liable for things they have control over—maintenance and operation of the school buildings and grounds, known discipline problems, etc. Schools are not liable for all of the bumps, scrapes and cuts kids get by being kids surrounded by hundreds of other kids.